

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLANE NEELY a/k/a WALTER MITCHELL : CIVIL ACTION
:
v. :
:
SIX CONTINENT'S HOTELS, et. al. : No. 02-3890

ORDER-MEMORANDUM

AND NOW, this 15th day of October, 2003, the "Motion for Judgment on the Pleadings of Defendants, Six Continents Hotels, Inc., Holiday Inns, Inc. and John Sweetwood" is granted, Fed. R. Civ. P. 12(c).¹

This civil rights action arises from the March 1977 arrest and subsequent conviction and incarceration of plaintiff Blane Neely a/k/a Walter Mitchell. On March 17, 1977, plaintiff was a guest at the Holiday Inn in Philadelphia, where defendant Elliott Jurist was the night manager. Second Amended Complaint, ¶¶ 10, 11. At approximately 11 p.m., Jurist is alleged to have given defendant David Grove, a Philadelphia police officer, access to plaintiff's telephone records and to have permitted him to listen in on plaintiff's telephone conversations. Second Amended Complaint, ¶ 12. It is further alleged that later that night, Jurist and Grove entered plaintiff's room and assaulted and robbed plaintiff. Second Amended Complaint, ¶¶ 13, 14. As a cover-up, plaintiff was then arrested, and subsequently convicted and incarcerated based on the testimony of Jurist and Grove.

¹ In deciding a motion for judgment on the pleadings under Rule 12(c), a court must "view the facts presented in the pleadings and the inferences to be drawn therefrom in the light most favorable to the . . . non-moving party" Green v. Fund Asset Management, L.P., 245 F.3d 214, 220 (3d Cir. 2001), quoting Institute for Scientific Info, Inc. v. Gordon & Breach, Science Publishers, Inc., 931 F.2d 1002, 1004 (3d Cir. 1991). Judgment is appropriate "only if the plaintiffs would not be entitled to relief under any set of facts that could be proved." Id., citing Consolidated Rail Corp. v. Protlight, Inc., 188 F.3d 93, 95-96 (3d Cir. 1999).

On June 25, 2002, plaintiff filed this civil rights action.² On February 18, 2003, movants filed an answer to the second amended complaint, asserting a statute of limitations defense, and now move for judgment on the pleadings.³

The parties agree that Pennsylvania's two-year statute of limitations applies to federal claims arising under 42 U.S.C. §§ 1981, 1985(3) and 1986. In general, civil rights claims for false arrest and false imprisonment accrue at the time of the arrest and are time-barred if not commenced within two years of the arrest.⁴ Plaintiff was arrested in March 1977, and any civil rights claim based on the arrest was time-barred two years later. This case was not filed until 2002, 25 years after the arrest and well past the expiration of the applicable statute of limitations. Plaintiff contends, however, that the statute of limitations in this case is tolled by the federal equitable tolling doctrine.

"Equitable tolling may be appropriate where the defendant has actively misled the plaintiff regarding her cause of action, where the plaintiff has in some extraordinary way been prevented from asserting her rights or where she has mistakenly asserted her rights in the wrong forum." Buckalew v. Ebi Companies, 2002 WL 1335110, at *4 (E.D. Pa, June

² Plaintiff pro se filed the original complaint and, on July 15, 2002, an amended complaint. On January 13, 2003, Cozen & O'Connor was appointed as counsel for plaintiff and immediately moved to amend the complaint. The motion was granted and on February 10, 2003, a Second Amended Complaint was filed.

³ "A claim may be dismissed as time-barred where it is clear from the complaint that the applicable statute of limitations has lapsed." Buckalew v. Ebi Companies, 2002 WL 1335110, *1 (E.D. Pa., June 5, 2002) (citations omitted).

⁴ Molina v. City of Lancaster, 159 F. Supp.2d 813 (E.D. Pa. 2001). See also Bailey v. Tucker, 533 Pa. 237, 261, 621 A.2d 109, (1993) ("it would seem that being subjected to a term of imprisonment is a harm or injury to the person. Nor can there be any doubt that the fact of this harm is readily ascertainable upon its occurrence.")

5, 2002), citing Lake v. Arnold, 232 F.3d 360, 370 n.9 (3d Cir. 2000); Oshiver v. Levin, Fishbein, Sedran & Berman, 38 F.3d 1380, 1387 (3d Cir. 1994). It is plaintiff's burden to demonstrate the applicability of equitable tolling, and part of the burden is proving the exercise of reasonable diligence in pursuing the claim. Buckalew, supra, at *4 (citations omitted).

Here, a period of 25 years elapsed between plaintiff's arrest and his assertion of a federal civil rights violation. Plaintiff argues that he was prevented from asserting his rights "in an extraordinary way" because defendant Grove was a member of the 5 Squad, a group of Philadelphia police officers engaged in "a long-standing pattern of the most appalling public corruption." United States v. Wilson, No. 88-282, Government Sentencing Memorandum, at p.2. However, plaintiff does not make out how the 5 Squad prevented him from proceeding with his claim. Also, there is no allegation that the 5 Squad was involved in plaintiff's arrest.⁵ In addition to the 25-year delay between arrest and the filing of this claim, there was a 12-year delay after the sentencing of the 5 Squad in 1990. Whatever influence or effect the 5 Squad may have had was dissipated upon the conviction and sentencing of its members.

"To invoke equitable tolling, [plaintiff] must show that [he] exercised reasonable diligence in investigating and bringing [his] claims." New Castle County v. Halliburton NUS Corp., 111 F.3d 1116, 1126 (3d Cir. 1997) (18-month delay in bringing CERCLA claim not excused by equitable tolling; complicated clean-up implementation procedures did not

⁵ Plaintiff's arrest occurred in March 1977. The documented activities of the 5 Squad occurred three years later, during the period 1980 through 1984. See Sentencing Memorandum.

constitute extraordinary circumstances). “One who fails to act diligently cannot invoke equitable principles to excuse that lack of diligence.” Baldwin County Welcome Center v. Brown, 104 S. Ct. 1723, 1726 (1984) (equitable tolling not invoked where pro se plaintiff ignored specific instructions regarding filing deadlines and filed employment discrimination action after 90-day period permitted by law). Plaintiff does not attempt to explain the extraordinary delay in filing his claim. In that he has not satisfied his burden of proving diligence in the pursuit of his claim, equitable tolling cannot be sustained. Plaintiff’s claims are time-barred.

BY THE COURT:

Edmund V. Ludwig, J.